IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1611 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASHRATBHAI M.PATEL - Petitioner(s)
Versus
STATE OF GUAJRAT THR' GOVT.PLEADER & 3 - Respondent(s)

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Appearance :
MR HASMUKH C PATEL for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2, 4,
RULE SERVED BY DS for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/10/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 13-1-2006 passed by respondent no.2 i.e. the Collector, Mehsana.

2. Facts leading to the present petition are as follows :

2.1 It appears that to construct a building for the use of Milk Cooperative Society at Khadalpur, Taluka and District Mehsana, land admeasuring 267 sq. mtrs. of village Khadalpur was granted by the Collector, Mehsana to the said society by an order dated 11-10-1972. Apparently, initially the land was of the ownership of the Panchayat who had agreed to transferring the land to the Government for the purpose of granting the land to the society for construction of its building. Grant of the land was on several conditions including the payment of price of Rs.534/- for land and Rs. 15 for the trees existing on the land at the relevant time. It was provided that land is being granted only for the purpose of construction of building of the society and will be used only for the said purpose. Condition no.3 in particular stated that the land will not be sold or gifted nor will be given on lease or any charge created

thereon without the permission of the Collector. It was also stated that in case of breach of any of the conditions, the land will be confiscated by the Government.

2.2 The concerned society was accordingly put in possession of land subject to the conditions mentioned here-in-above.

2.3 It appears that many years thereafter, the society went into liquidation and the Government appointed Shri H.S. Patel as Liquidator of the society.

2.4 While winding up the society and disposing of its assets, said officer also decided to sell the said land through public auction. Initially the auction was fixed on 21-12-2004 with an upset price of Rs. 2,75,000/. Since no proper bids were received, the property was put in auction once again on 25-1-2005. The petitioner participated in the said auction proceedings. It may be noted that intimation of

both the auctions namely one proposed on 31-12-2004 and another actually held on 25-1-2005 was sent to several Government authorities including Talati-cum-mantri of Khadalpur, Collector Mehsana, District Development Officer Mehsana, Mamlatdar Mehsana and Taluka Development Officer Mehsana etc.

2.5 The petitioner offered highest price for the land in question and agreed to pay a sum of Rs. 7,02,000/- for the land in question. His offer was accepted and as per the terms of auction, he deposited the entire sale price before the Liquidator within the time permitted.

2.6 A sale deed on 7-2-2005 was executed in favour of the petitioner by the liquidator.

2.7 On 13-5-2005, the Liquidator approached the Government by a letter and conveyed to the Collector his action of having sold the land in question through public auction and requested the Collector to approve the sale.

2.8 In the said letter the Liquidator did not indicate any provisions under which such permission was being sought nor did he indicate that the request is made on account of the conditions contained in the order dated 11-10-1972 granting the land to the society, though he did refer to the said order dated 11-10-1972.

2.9 Be that as it may, the Collector by his impugned order dated 13-1-2006 refused to grant permission as requested and in fact held that the sale had taken place without prior permission which is contrary to the conditions for grant of land and the land is therefore, confiscated by the Government. The petitioner has therefore, approached this Court challenging the said order passed by the Collector.

3. I have heard learned advocate Shri H.C. Patel for the petitioner and Learned AGP Shri Gori for the respondents. At the outset, it can be seen

that the petitioner purchased the land in question through a public auction. No allegations have been made either in the impugned order passed by the Collector or in the affidavit in reply filed on behalf of the respondents that the petitioners had connived for acquiring the land through improper means. In fact, the auction was published by the Liquidator for respondent no.3 society who was appointed by the Registrar. Learned advocate for the petitioner placed on record entries of the revenue records pertaining to the land in question. These entries clearly indicate that land was shown as old tenure land. The petitioner therefore, could validly maintain a belief that the land was free from encumbrances. When the land was being sold by an officer of the Government to liquidate a society so ordered by the Government officials and when the revenue records indicate that the land was old tenure land, the petitioner was justified in carrying a belief that the said sale was with prior permission from the Government. Additionally, on

two different occasions, the Liquidator had communicated the proposed dates of auction to all the revenue authorities of the District. At no stage any objection was raised against the proposed sale. Eventually, the petitioner being the highest bidder and his bid having been accepted, paid entire purchase price as agreed by him to the Liquidator and deposited a total sum of Rs.7,02,000/- within the stipulated time. Even at this stage, Liquidator did not disclose to the petitioner that the sale cannot be effected without permission from the Collector. Not only this, in fact a sale deed was entered into between the petitioner and the Liquidator for and on behalf of the society. Only thereafter, the respondent approached the Collector for granting permission to sell the land to which request the response of the Collector was that the sale offends condition no.3 of the order dated 11-10-1972 granting the land to the society. The Collector accordingly proceeded to confiscate the land holding the sale illegal.

4. At the outset it can be seen that the order passed by the Collector was without hearing the petitioner and this was clearly in breach of principles of natural justice. On this ground itself, it would have been perhaps open for this Court to quash the order passed by the Collector. However, facts of the case are somewhat peculiar and not in dispute. It would therefore, not be appropriate for this Court to strike down the order of Collector only on this technical ground and I find that it would be necessary to mould the relief in special facts of the case to do justice.

5. To the aspect of the matter that land was granted to the society under order dated 11-10-1972 upon certain conditions there is hardly any dispute. Though the petitioner can legitimately and to my mind justly claim that he was never aware about such an order till the land was sold to them, fact remains that grant of land was attached with certain conditions.

One of the main conditions was that land will not be sold or leased without the permission of the Collector and the same was granted only for the purpose of the society for construction of its building. In wake of this condition, therefore, it was not open for the Liquidator to auction the plot without prior permission of the Collector. The order of the Collector therefore, to the extent the same pertains to confiscation of the land in Government, calls for no interference. It was a Government land granted to the society for its use with a condition that same will not be divested without the permission of the Collector. The petitioner therefore, could not have acquired any better title than what the society had.

6. The matter however, does not end here. The petitioner to my mind bona fide believing that he is purchasing a piece of land free from encumbrances, paid a sum of Rs. 7,02,000/- to the Liquidator. The Liquidator who was appointed by the Government for winding up the society,

committed a series of errors. Firstly, he held auction of the plot ignoring the conditions contained in order dated 11-10-1972. Secondly, he entered into a sale deed unmindful of such conditions and also accepted full purchase price from the petitioners. Thirdly, only after entering into the sale deed, he approached the collector for permission to sale the land. He simultaneously not only appropriated the full sale price received from the petitioners but also utilised the same for disbursement and payment of dues of the society. Thus when the Collector by his impugned order in January 2006 refused to recognise the sale and decided to confiscate the land, respondent no.3-Liquidator had already used up the sale price of the land received from the petitioner.

7. Considering the above aspects of the matter and also considering the fact that the petitioner was never aware about the nature of order granting the land to the society, considering the fact that the revenue records indicated that

land was an old tenure land and all attendant circumstances enlisted here-in-above, I find that it would be totally unjust and inequitable to leave the petitioner both without the land as well as the sale price.

8. The respondent no.3-Liquidator as well as the State Authority cannot escape the liability of the refunding the sale price paid by the petitioner for the land in question.

9. Considering all these aspects of the matter, respondents are directed to pay a sum of Rs.7,02,000/- to the petitioner within a period of six weeks from the date of receipt of a copy of this order. If so done, within the time so permitted, respondents shall not bear any interest thereon. Any further delay will carry simple interest at the rate of 9% per annum to the extent of delay. It is clarified that it is joint and several liability of respondents to carry out these directions. It would be open for the Government to seek recovery from the society

if funds are available and also inquire into any negligence or other misconduct on part of the liquidator in bringing about such a situation.

10. With these directions,the petition is disposed of. Rule made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(raghu)